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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JING MIN XU, ZHONG TIAN,
and LEO Y. LIU

Appeal 2008-006166
Application 09/754,813
Technology Center 2100

Decided: November 30, 2009

Before LEE E. BARRETT, HOWARD B. BLANKENSHIP, and
JAMES R. HUGHES, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-15 and 17-21, which are all the claims remaining in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse, and enter a new ground of rejection against claims 1-10.

Representative Claim

1. A system comprising:

a plurality of certificate authorities (CAs) in which each CA maintains and distributes digital certificates revoked by itself in the form of a certificate revocation list (CRL), and different CAs may use different CRL distribution mechanisms;

multiple CRL retrieval agents configured to periodically retrieve CRLs at time intervals from different CAs using a plurality of CRL retrieval agents based on the CRL distribution mechanisms of CAs;

a plurality of CRL databases for storing the consolidated CRLs from the multiple CRL retrieval agents and/or the replications of CRLs, the CRL databases storing at least one individually identifiable revoked digital certificate; and

a CRL access user interface for providing a uniform set of Application Program Interfaces for users accessing the CRLs in the CRL database, said system enabling consolidation and access of the certificate revocation lists (CRLs) from the plurality of certificate authorities (CAs).

Prior Art

Curry	6,128,740	Oct. 3, 2000
Strellis	6,304,882 B1	Oct. 16, 2001
Ng	6,411,956 B1	Jun. 25, 2002
Kocher	6,442,689 B1	Aug. 27, 2002
Ginter	6,658,568 B1	Dec. 2, 2003

Vesna Hassler, *X.500 and LDAP Security: a Comparative Overview*, IEEE Network, Vol. 13, No. 6, pp. 54-64 (Nov/Dec. 1999) ("Hassler").

B. Kaliski, *Privacy Enhancement for Internet Electronic Mail: Part IV: Key Certification and Related Services*, RFC 1424, pp. 1-8 (Feb. 1993) ("Kaliski").

Examiner's Rejections

Claims 1, 4, 6, 7, 10, 11, 13-15, and 17-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kocher, Curry, and Ng.

Claims 2, 8, and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kocher, Curry, Ng, and Ginter.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kocher, Curry, Ng, and Hassler.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kocher, Curry, Ng, and Kaliski.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kocher, Curry, Ng, Ginter, and Strellis.

DISCUSSION

The Standing Rejections

Appellants argue independent claims 1, 11, and 18 in response to the § 103(a) rejections. Appellants submit that each claim on appeal contains, or incorporates by limitation, a feature that is not found in the applied prior art.

At the outset, we note that claim 1, as drafted, is indefinite. We set forth a new ground of rejection under 35 U.S.C. § 112, second paragraph, *infra*. For the sole purpose of comparing the claimed subject matter with the

prior art, and our review of the prior art rejections, we presume that claim 1 requires multiple CRL (certificate revocation list) retrieval agents configured to periodically retrieve CRLs at time intervals from different CAs (certificate authorities) based on the CRL distribution mechanisms of CAs. Method claim 11 (first recited step) sets forth a limitation similar to that which we presume in claim 1, as does method claim 18 (first recited step).

In the rejection of claim 1, the Examiner finds that Curry discloses multiple CRL retrieval agents configured to periodically retrieve CRLs at time intervals from different CAs using a plurality of CRL retrieval agents based on the CRL distribution mechanisms of CAs, referring to text at columns 2, 5, and 6 of the reference. Ans. 4.

Curry at column 2, lines 26 through 41 discusses (with respect to the background of the invention) certification authority servers (managers) that collect their own revoked certificates and queue them to be published, on a periodic basis, with other existing revoked certificates. The reference, at column 5, lines 23 through 27, describes aspects of the Curry invention, whereby an on-demand publishing/queue "determinator" 34 (Fig. 2) receives revocation request data from a software application or a security officer. Curry at column 6, lines 33 through 38 refers to caching of CRL data on a client or network node, whereby the client or node periodically accesses a CRL repository 16 (Fig. 2).

The seemingly relevant portion of the noted teachings of Curry relates to periodic updating of client caches with CRL data. Yet, the Examiner appears to refer to the certification authorities or managers as synonymous with the claimed "multiple retrieval agents." *See* Ans. 12 ("utilizing certification authorities or managers (i.e., multiple retrieval agents) . . . .").

On the next page of the Answer, the Examiner appears to shift position and indicates that Curry's client or network nodes correspond to the claimed multiple retrieval agents. *See id.* at 13 ("the client or network node (i.e., CRL retrieval agents based on the CRL distribution mechanisms) periodically accesses the CRL retrieval repository 16 . . . .").

In any event, whether the "multiple retrieval agents" are deemed to be taught by the certification authorities or managers, or taught by the clients or network nodes that periodically access a repository to retrieve CRL data, we agree with Appellants that the Examiner has not shown that the references teach multiple CRL retrieval agents configured to periodically retrieve CRLs at time intervals from different CAs based on the CRL distribution mechanisms of CAs. As we have noted, the more relevant teaching in Curry appears to be the clients or network nodes that maintain local caches based on periodic retrieval of CRL data from a CA 12 (Fig. 2) that has been placed in a CRL repository 16. However, absent a convincing explanation from the Examiner, we are left to speculate how Curry might be deemed to teach the features attributed to the reference by the instant rejection.

The Examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). In a rejection on obviousness grounds, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). We are unable to sustain the § 103(a) rejection of claim 1.

The rejection of claim 11 (and claim 18) alleges that Kocher teaches creating a plurality of CRL retrieval agents, but that Curry teaches periodically retrieving CRLs at time intervals from different CAs using a

plurality of CRL retrieval agents based on the CRL distribution mechanisms of CAs. Ans. 6-8. The referenced portion of Curry, for the rejection of claims 11 and 18, appears to relate to the certification authorities or managers that we have discussed, and appears to have nothing to with retrieval agents that periodically retrieve CRLs at time intervals from different CAs based on the CRL distribution mechanisms of CAs.

Because all of the standing rejections rely on the apparent deficiencies of Curry as applied against the claimed subject matter, we cannot sustain the § 103(a) rejection of any claim on appeal.

New Ground of Rejection -- 35 U.S.C. § 112, Second Paragraph

We reject claims 1-10 under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 2 through 10 depend from base claim 1. Claim 1 recites "multiple CRL retrieval agents configured to periodically retrieve CRLs at time intervals from different CAs *using a plurality of CRL retrieval agents* based on the CRL distribution mechanisms of CAs" (emphasis added).

For our review of the § 103(a) rejections, we interpreted claim 1 as if the "using a plurality of CRL retrieval agents" was not present in the claim, consistent with corresponding recitations in claim 11 and claim 18. In Appellants' invention, however, *multiple CRL retrieval agents* do not *use a plurality of CRL retrieval agents* to periodically retrieve CRLs at time intervals from different CAs (*see, e.g.*, App. Br. 3, Summary of Claimed Subject Matter and the referenced disclosure in the Specification).[1] That is,

[1] The second occurrence of "retrieval agents" was introduced into claim 1 by an amendment submitted May 3, 2004.

in Appellants' invention the agents periodically retrieve CRLs from different CAs, rather than a plurality of CRL retrieval agents being used by multiple CRL retrieval agents to retrieve CRLs.

We thus consider instant claim 1 to be misdescriptive of Appellants' invention, and thus indefinite under § 112, second paragraph. Moreover, even without consideration of Appellants' disclosed invention, the recitation of both "multiple CRL retrieval agents" and "a plurality of CRL retrieval agents" would leave one unable to determine whether a particular agent might make up part of the "multiple" and/or part of the "plurality." We therefore reject claims 1 through 10 under 35 U.S.C. § 112, second paragraph.

DECISION

The Examiner's rejections of claims 1-15 and 17-21 under 35 U.S.C. § 103(a) are reversed.

In a new ground of rejection, we reject claims 1-10 under 35 U.S.C. § 112, second paragraph, as being indefinite.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (2009). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .
>
> (2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

REVERSED-- 37 C.F.R. § 41.50(b)

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